IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1641 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

V.L.PATEL - ASSTT.TEACHER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1641 of 2003

MR ANANT S DAVE for Petitioner No. 1

MR MANOJ S JOSHI for Petitioner No. 1

MR DABHI, Ld. AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/03/2003

ORAL JUDGEMENT

1. Leave to delete respondent No.3, Principal, Parvatiniketan High School, since he is only a party implementing the decision of the State Government.

2. Rule. Mr.Dabhi, learned AGP, waives service of notice of rule on behalf of the State Government. With the consent of the parties, the matter is taken up for final hearing.

3. In this matter, the petitioner is challenging the communication at Annexure "A" issued by the District Education Officer (D.E.O) to the Principals of the concerned School, where the petitioner is serving, to recover double the amount of LTC and also to get an undertaking of the employees concerned and if such action is not taken, it is further directed that criminal case shall be launched against the responsible persons.

4. Heard Mr.Dave, learned Counsel for the petitioner. The contention raised on behalf of the petitioner is that the petitioner has only claimed the amount of LTC by presenting the bills of LTC, but the petitioner has not actually received the amount of LTC. Mr.Dave submitted that in any case, without prejudice to the rights and contentions, the petitioner is ready to deposit the amount of the LTC bills, though he has not actually received, but he submitted that in any case the imposition of penalty of double the amount is without giving any opportunity of hearing whatsoever. Mr.Dave has also relied upon the judgement of this Court in SCA No.382/2003 and allied matters to contend that this Court had given direction to give opportunity of hearing and the authorities were directed to decide the matter and till then further recovery was stayed. However, he fairly submitted that in the proceedings of SCA No.382/2003, the petitioners therein had already deposited the amount of LTC and, therefore, to seek parity the petitioner is also ready to deposit the amount of LTC. However, he submitted that the penalty imposed of one additional amount is in any case without giving opportunity of hearing and in breach of the principles of natural justice and, therefore, the matter requires consideration.

5. Having considered the above, I am of the view that even the perusal of the communication issued by the District Education Officer shows that the bills were presented and there is no reference to the receipt of the amount of bills by the petitioner. In any event, when Mr.Dave has shown willingness on the part of the petitioner to deposit principal amount of LTC bill, the

only question would be as to whether the penalty could be recovered without giving opportunity of hearing to the petitioner.

6. Mr.Dave states that the communication at Annexure "A" has been issued without giving any opportunity of hearing whatsoever.

7. Under these circumstances, I am of the view that if the petitioner is directed to make representation before the authority after depositing the principal amount of LTC bills and if the authority considers the representation and decides the matter since before imposition of penalty, as per the aforesaid statement, is without giving opportunity of hearing no prejudice shall be caused. Hence the petitioner may deposit the principal amount of LTC bills with the D.E.O., Godhra within period of 20 days and during that period the petitioner may make representation to the D.E.O. pointing out all details. If such representation is made by the petitioners and the amount is duly deposited by the petitioners, the D.E.O. shall consider the representation as early as possible, preferably within a period of two months from today and till then there shall be stay against the recovery of the penalty amount of LTC namely; one additional amount of LTC and the further proceedings thereto.

8. Petition is disposed of in terms of the directions only. Rule discharged. No cost.

29-3-2003 (Jayant Patel, J.)

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